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EXERCISE OF RIGHT OF EMINENT DOMAIN OVER PUBLIC LANDS OF THE UNITED STATES.

In Utah Power & Light Co. v. United States, 230 Fed. 328, decided by Eighth Circuit Court of Appeals, there is incidental, if not necessary, discussion of the question, whether under a State statute, generally speaking, any part of the land of the United States in its public lands is subject to the power of eminent domain, and, particularly, whether provisions of the enabling act of a State disclaiming for its people all right or title in such land avoids the exercise of such right, if it otherwise exists.

Van Valkenburg, D. J., says: "It is true that in some of the earlier decisions the validity of the exercise of the right of eminent domain by a State over the lands of the United States has received apparent recognition." Citation of these earlier decisions shows many circuit court cases and one Supreme Court case.

Proceeding, he says: "This view is predicated upon the assumption that while the government lands are not held or reserved for specified national purposes, the United States occupies the position of a mere individual proprietor with rights and remedies neither less nor greater. An examination of the cases cited, however, discloses that the peculiar facts with which they dealt, and the later cases leave little doubt that the Supreme Court has not recognized and will not recognize, the limited control of Congress over the territory and property belonging to the United States, for which defendant contends. The public lands of the United States are held by it, not as an ordinary individual proprietor, but in trust for all the people of all the States, to pay debts and provide for the common defense and general welfare under the express term of the Constitution itself. * * * Congress has the exclusive right to control and dispose of them, and no State can interfere with this right or embarass its exercise." Here are cited several Supreme Court cases.

This reasoning, based on "the express terms of the Constitution," it is apparent, could have been as effectually employed when these early decisions were rendered as at this date, and it would have been greatly more illuminating to look to the peculiar facts one, at least, of these decisions took into consideration than to cite later cases in which there only could be claimed an argumentative inconsistency.

For example, it is said the United States "does not and cannot hold property as a monarch may, for private or personal uses, and it can prohibit absolutely or fix the terms on which its property may be used, and it holds land in trust," etc., etc., for all of which appropriate decision is cited. But to what do all of these comprehensive general statements come, if a single instance, no matter what were the peculiar facts connected with it, the exercise of the right of eminent domain over such property has been recognized by our Supreme Court? The only peculiar facts that could exist are subordinate to the all-embracing power of the United States.

If that power recognizes in a single instance the right by the state to condemn land owned by itself, it recognizes permissive domination by the state, so far as public uses are concerned.

Furthermore, what has the holding in trust to do with this question? If not to hold in trust subjects the property to exercise of the right of eminent domain, surely what is held for one *cestui que trust* does not escape this power.

It may be said this holding in trust is for a public purpose. In other words, holding for some of the people as *cestuis* is not for a public purpose, but holding for such of all of them as wish to acquire the land is a holding for a public purpose. We do not believe this to be true, because, if each one after he acquires a portion of such land makes it subject to the exercise of the right of eminent domain, his right to acquire ought likewise to be so subject. This is but a sort of franchise in each one of us in land and it has long been held that a franchise in land is as subject to the right of eminent domain as is the land in which it exists.

As to the other branch of the query suggested, we think it apparent that provisions

of enabling acts of the character suggested cannot fairly be construed as meaning, that any different rule could have been contemplated in states with such acts than obtains in other states. The fact that the government holds title to such lands in trust not for residents of a particular state but for those of all the states, shows this to be true.

The learned judge held, however, that both generally and in Utah particularly, public land is not subject to be taken under the right of eminent domain under a State statute.

NOTES OF IMPORTANT DECISIONS.

DIVORCE—GRANTABLE WHERE MARRIAGE WAS ENTERED INTO FOR CONVENIENCE.—In Spady v. Spady, 155 Pac. 169, decided by Oregon Supreme Court, the husband brought suit and there was crimination and recrimination, the wife filing a cross-bill of which the court obs[illegible] that "the most important part is her allegation about his realty and personal property and her demand for alimony."

The court then goes on to say: "It is of no moment that we recite the testimony, although it has been carefully read. It is enough to say that it is apparent that the plaintiff wanted a housekeeper and that defendant wanted not only a home, but a considerable part of the plaintiff's property. This, taken together with the friction between the defendant and the children constitutes the real essence of the case. Neither party is without fault. The case presents no equitable aspect. The marriage contract ought not to be degraded to the level of a mere barter nor rescinded as one would a sharp trade of scrub horses. The proper solution of the case is that neither party is entitled to relief."

How greatly could not such a remark about degradation of the marriage contract find occasion for application in suits for divorce that come before the court? Ought not all "trial marriages" receive the sort of disposition this case received? And when we reach this point ought not the principle to be extended so that the same inviolability should be fastened on marriage, in the interest of society, where it is deliberately entered into? Especially is this not true when children come into the relation and have rights, which civilization should protect notwithstanding the inconvenience, disappointment or even abject misery of the principals to the contract? Ought not a married couple seeking a divorce be required to show and by other testimony than their own, as a condition of a decree for divorce being granted, that this looks to the interest and not to the detriment of offspring?

BANKRUPTCY—DAMAGES FROM ANTICIPATORY BREACH OF CONTRACT PROVABLE AGAINST BANKRUPT.—In Central Trust Co. v. Chicago Auditorium Co., 36 Sup. Ct. 412, it is said: "Whether the intervention of bankruptcy constitutes such a (anticipatory) breach (of a contract) and gives rise to a claim provable in * * * bankruptcy proceedings is a question not covered by any previous decision of this court and upon which the other Federal courts are in conflict."

In answer to the contention that such a breach must "result from the voluntary act of one of the parties and that the filing of an involuntary petition in bankruptcy, with an adjudication thereon, is but the act of the law resulting from an adverse proceeding instituted by creditors," the court said: "Commercial credits are, to a large extent, based upon the reasonable expectation that pending contracts of acknowledged validity will be performed in due course; and the same principle that entitles the promisee to continued willingness entitles him to continued ability on the part of the promisor. In short, it must be deemed an implied term of every contract that the promisor will not permit himself, through insolvency or acts of bankruptcy, to be disabled from making performance; and, in this view, bankruptcy proceedings are but the natural and legal consequence of something done or omitted to be done, in violation of his engagement. It is the purpose of the bankruptcy act, generally speaking, to permit all creditors to share in the distribution of the assets of the bankrupt, and to leave the honest debtor thereafter free from liability upon previous obligations."

This last clause implies that, if assets in bankruptcy are not subject to damages from anticipatory breach of contract, the bankrupt then would be liable to suit notwithstanding his discharge in bankruptcy. The exceptions provided for do not, as to all of them, at least, prohibit sharing in such assets. They give the creditor an election. We confess, however, that it is not clear why the court theorizes about expectation in "commercial credits," when if the principle decided is sound at all, it ought to apply to other credits as well.

The court continues thus: "Executory agree-

ments play so important a part in the commercial world, that it would lead to most unfortunate results if, by interpreting the act in a narrow sense, persons entitled to performance of such agreements on the part of bankrupts were excluded from participation in bankrupt estates, while the bankrupts themselves, as a necessary corollary, were left still subject to action for non-performance in the future, although without the property or credit often necessary to enable them to perform." Again we suggest that the "commercial world" is not all of the world that the bankruptcy act applies to, and possibly it is not the most important part of that world.

MAKING LAW AND FINDING LAW.

The Recurrence of Legal Problems.—Few things are more impressive to the student of social institutions than the perennial character of the problems which each time is wont to think of as peculiar to itself. A few years ago a German scholar made a minute comparison of the Code of Hammuravi, a Babylonian king of at least the twentieth century B. C., and the laws of the Salian Franks, dating from the end of the fifth century or the beginning of the sixth century, A. D. It would be hard to find two bodies of law more absolutely unrelated in the sense of derivation or influence or two peoples more unlike than the Babylonian of twenty centuries before Christ and the Frank of the fifth century, A. D. And yet their codes are marvelously alike. Point after point is dealt with in precisely the same way; point after point appears alike in each.

Again, in the fourteenth century the great Italian commentator, Bartolus, discussed at some length the question of the conflict of laws which arose with reference to the different statutes of different cities, or rather different city republics in Italy. In the twentieth century the Supreme Court of North Dakota had that identical question before it, arising between different states of this Union, and although that court probably had never read Bartolus. and very possibly had never even heard of him, the two reached the same conclusion, and they reached it by the same line of reasoning.

Apparently there is some common fundamental element in human nature which calls forth the same jural institutions and gives rise to the same juridical puzzles under the most diverse circumstances and in the most distant times.

The problems of legal history then are recurrent problems; they are perennially recurrent problems. Our own legal history, of our Anglo-American law, is full of illustrations of this recurrence of the same problem under different circumstances and in different forms.

For instance, the making over of the strict law through equity in the sixteenth and seventeenth centuries, the making over of the law again in the eighteenth century through the law merchant, the making over of the law again which is going on to-day through the influence of economic ideas of social justice, are essentially different types of the same phenomenon. The law was made over through equity by the absorption of moral ideas of fifteenth and sixteenth century clergymen; the law was made over in the eighteenth century by the absorption of business ideas through the influence of the merchants of that time; the law is being made over under our eyes to-day through the absorption of ideas of social justice derived from twentieth century social science and economics. And yet, these are essentially the same phenomena. In each case the law for a time had become over-rigid and it attained the necessary measure of flexibility through the absorption of ideas developed outside of the law, contributed by sixteenth century clergymen or eighteenth century merchants or twentieth century economists.

To-day the task of the American lawyer is to make the juridical materials fashioned for pioneer, rural, agricultural America of the nineteenth century into a law for urban, industrial America of the twentieth century. Obviously it is but the same problem in a new form—it is the problem

that will always confront lawyers till the triumph of anarchy or the advent of the millennium do away with the need for law, namely, to shape the rules that have come down to us as a part of the civilization of the past so as to further the civilization of the present. Hence, also, the contest between legal reason and authority, which the process of achieving that task is bringing out, is but illustrating the tendency of legal history to repeat itself. The same contest raged between the great lawyers of the classical American law and those, on the one side, who would worship every jot and tittle of the law in the English books and those on the other side, who would have codified a supposed law of nature. To-day the contest appears superficially one between common law and legislation. But to look at it in this way is to lose its real significance and in so doing to imperil the lawyer's position. It is not conscious making of law that we are to resist. It is rather the setting up of will, merely as will, as the measure of law in the place of reason. So viewed, the contest between what I have ventured to call finding law and making law is but a phase of the perennial contest in social institutions between reason and force as modes of social control.

The Purpose and End of Law.—When to-day, with the experience of the past, with legal history behind us, we try to frame an account of the purpose and end of law in the modern world, I suppose we should say that there are certain interests, social, public and individual, which require to be secured, and that the law is that agency which secures those interests through reliance upon the force of organized political society. But in its beginnings the law was by no means so ambitious. The law by no means in the beginning sought to secure as many of these interests as it could. The law was brought into being by the exigencies of one single fundamental human interest, the social interest in the preservation of the peace, peace and order in society, without which civilization is quite impossible. And the whole nature of law, the whole course of legal development, has been shaped by the exigencies of that one interest, which called law originally into being. To primitive society the one great problem was the simple one of keeping the peace, of providing some means whereby controversies might be peaceably adjusted, whereby men might resort to some peaceable arbitration, instead of fighting out their controversies through private war.

In the beginnings of society this compelling disputants to arbitrate is exactly what the law endeavored to do, and all it endeavored to do. In the old Roman lawsuit of the period just before Cicero, there is preserved for us a ceremony which takes us back to the very beginning of the law. If the plaintiff and defendant were contending over a piece of land, a clod from that land was brought before the magistrate. The parties each had in their hands a staff, representing, we are told, a spear. The plaintiff put his staff, or spear, upon the clod and said, "I say that land is mine by legal title." The defendant then put his staff upon the clod and said, "I say by legal title the land is mine." Then the praetor stepped between them with his staff, representing a spear, put it down between them, and said, "Let go, both of you," and the ceremony was gone through, resulting in an arbitration. There was no direct judgment of the law throughout the whole course of the republic of Rome, but every proceeding ended with reference to an arbitrator. Down well into the imperial period, the judge who decided the cause, or rather the arbitrator who decided the cause, sent out for an expert to tell him the law, while he attended to the function of investigating the facts.

We say then that in the beginnings of law all that can be done, all that the law seeks to do, is to induce a peaceable settlement, but, as men will not be satisfied with a decision of causes upon authority, rest-

ing upon force rather than upon reason, the next step which the law had to take was to find some principles or standards for decision, so that decisions might be grounded upon reason and not upon force; and from that it was an easy further step to the establishment of general rules of conduct in advance of controversies, by which controversies might be not merely decided but even averted.

The Two Types of Legal Rules.—If we bear this bit of history in mind we see that, first, the law devoted its whole energy to finding simple rules of decision. The modern conception of rules of conduct is one which was evolved as the result of the perfecting of these rules of decision.

These rules of decision, which are also rules of conduct, may be either of two types. They may be rules which are discovered by experience of the adjudication of controversies and are handed down as parts of a traditional body of legal principles, or they may be rules not found in this way but made consciously, rules authoritatively declared, or deliberately made as the will of the political sovereign. And so we have in every developed body of law two elements, in the legal system, an imperative element resting upon the authority of the State, and a traditional element resting upon the experience of the past in the adjudication of controversies. We think commonly of this imperative element as the modern element. But there is a progression from each of these to the other. In time the imperatively enacted rule becomes part of the legal tradition. A gloss of interpretation grows up around it, and it is swallowed by the common law. For example, the old English legislation prior to the Revolution is a part of the common law of this country, as for example, the statute of limitations and the statute of frauds. In like manner in our Western States, the homestead statutes have become practically through their construction and interpretation a part of the common law. On the other hand, as the traditional element is developed by juristic science, presently it comes to be declared and formulated authoritatively, as, for example, in our negotiable instruments law or sales act or the new uniform partnership act, which simply codify what has been worked out through judicial experience. We have then in our law these two elements. On the one hand, the traditional element resting originally in the customary modes of decision of causes, but presently developed by judicial experience and by juristic science, until it becomes a scientific body of principles resting, as men believe, upon reason, and having the basis of its authority in conformity to ideals of right and justice, and, on the other hand, the imperative element, which avowedly rests simply upon the authority of the State.

Let us look for a moment at each of these elements, and at the part which it plays in the administration of justice.

The Traditional Element in the Law—Its Disadvantages.—And first of the traditional element. The common law has been praised so often and so justly that I am going to look first at the other side of the picture, because in appraising our legal system for the purposes of the present and the future we must look without prejudice at both sides of this immemorial tradition of our common law. And if we look at it critically, I think there are three difficulties in the utilization of a traditional body of law for the future which at once suggest themselves.

The first is a tendency in the traditional part of the law when it comes to be worked over scientifically to an over-abstraction, a tendency to be satisfied, for example, with an abstract liberty, or an abstract equality, to be satisfied if the rules looked at abstractly measure up to these abstract conceptions of liberty and equality, although in their concrete, every-day applications they may as like as not defeat them.

To avoid anything controversial, I am going, by way of illustration, to relate an

oft-told story of one of the English judges of the last century at the time when the old divorce law was in force in England which compelled one to resort to Parliament for a divorce.

It happened one day that Mr. Justice Mall was called upon to sentence a prisoner convicted of bigamy. It chanced that the prisoner's wife had run away with another man and was living with him in one of the colonies, and the prisoner conceived that that was a sufficient warrant for him to go through a second ceremony of marriage. Whereupon he was convicted of bigamy, and Mr. Justice Mall, in sentencing him, spoke somewhat in this fashion: he said, "My good man, you have entirely mistaken your remedy. This was by no means a situation where you were without legal relief. You should first have brought an action in the Court of Common Pleas against this man who you say ran away with your wife, and then at the end of three years' litigation and the expenditure of some three or four hundred pounds, you would have recovered an uncollectible judgment for damages against him. Then you should have gone to the ecclesiastical courts and have prosecuted there a proceeding for a divorce from bed and board. That would have taken another two or three years and would have cost you three or four hundred pounds. Then you would have been at liberty to apply to Parliament for an act of divorce. This in the ordinary course would have taken two or three years and very likely would have cost you some thousand pounds. But thus, after the lapse of possibly ten years and the expenditure of some two thousand pounds, you would have been at liberty to remarry. And if you tell me that at no time in your life you have ever had or do you ever expect to have two thousand pennies, my answer must be that it hath ever been the glory of the law of England not to have one law for the rich and another for the poor."

That tendency then to be content with an abstract equality, abstract liberty, abstract justice, is a vice which perennially develops in the scientifically worked out traditional element of the law.

Another difficulty equally conspicuous, as we review the history of the traditional element of the law, is a tendency to logic for logic's own sake, a tendency to the logical working out of means, neglecting the end, a tendency in the logical pursuit of a principle to its ultimate logical consequences to lose sight of the end for which law exists. This tendency I think was especially marked in American legal procedure of the last century. I should say that that tendency reached its height in our procedure from 1875 to 1890, and has been steadily on the wane, rapidly on the wane ever since. But it was marked in that period. And I suppose it is really simply an example of the tendency to pursue logic for its own sake which is involved in all science and in all system. It is a penalty which we pay for the science and system which we must have, which achieves so much for certainty, so much for uniform and impartial administration of justice, and yet involves the sacrifice which is involved in all machinery.

This is not peculiar to legal science. It can be seen in some of the most practical of the sciences. I suppose you would agree that nothing is more practical, nothing requires more efficiency or puts efficiency more severely to the test than military science or naval science, and yet we see the same thing here.

For instance, the historian tells us that at the Battle of Balaclava the English pickets, who were posted out in advance to warn the English forces of the advance of the enemy, were themselves surprised, and that the attack upon the main body had actually developed before they were at all aware that anything had happened. The historian explains that this was due to the high discipline and drill of the pickets. They had been drilled to walk back and forth on their beats with their eyes straight

to the front and their muskets in a prescribed position and at a prescribed angle, and they walked back and forth on those beast so faithfully that an army corps of Russians could pass between them without attracting their attention.

Such cases where the end has been sacrificed to the means have a lesson for us in legal science, because we are very apt to do the same thing for the same reason. We are apt in the logical development of the means to lose sight completely of the end.

Then there is a third tendency which is no less marked in the traditional element of the law; that is, the tendency to take historical accidents, things which have come into the law fortuitously as a result of legal history—to take them to be as it were a part of the jural order of nature. That is something to which Anglo-American law was particularly prone through the dominance of historical study in the last century. There is a certain amount of truth in it. The traditional element does represent experience of the actual determination of concrete disputes. But the circumstances of one time, the analogies that one time presents, may and often do put rules into the law which represent simply the first analogy that the lawyer had at hand when the first case arose. We must be careful—and we have not always been sufficiently careful—to distinguish those things which represent a genuine and tested experience from those parts of our traditional system which represent simply the accidents of legal history.

It is a familiar rule, that if in a devise of lands in a will there is an impossible or illegal condition precedent, the gift fails. But if there is a gift of personalty in a will upon an impossible or illegal precedent condition, the gift stands, and the condition is treated as though it had not been written; it is wiped out. That rule does not represent any experience in the adjudication of causes at all. It represents no intrinsic, no logical difference between lands and chattels. It represents simply the accident of the time at which a Roman jurist was first called upon to pass upon this matter of a condition precedent in testaments. This question first arose in the latter days of the Roman republic, at a time when wills were greatly favored, because they were the only means by which the Roman could avoid a most inequitable scheme of inheritance which had been imposed upon him by the religious ideas of the past. The jurists favored wills; they were anxious not to defeat them; and when there was danger of a gift failing through an impossible or illegal precedent condition, they simply wrote the condition out of the will, and upheld the will. The common law on the subject of conditions arose at a time when there was no reason to favor wills. It arose at a time when everybody was perfectly satisfied with the common law as to the inheritance of property. Possibly if it had arisen in the nineteenth century, when the succession of the eldest son was not so popular, the Roman course might have been taken; but, coming up at a time when everyone was satisfied with the law of inheritance, the doctrine grew up, and properly so, that if one desired to dispose of property by will, he must do so according to the rules of the law. Consequently, if his condition precedent failed, his gift failed. Now, in tthe eighteenth century the English chancellors had read the Roman law not wisely but too well, so that if a thing was labeled Roman, or "civil," that was regarded as a sufficient reason for adopting it. Hence when they were dealing with gifts of chattels, which in the past had been in the jurisdiction of the ecclesiastical courts, and had been governed by the civil law, they not unnaturally, for both reasons, turned to see what was the law of Rome. Finding in the Roman law this rule about impossible conditions, they annexed it bodily, and to-day we have in our law, as a pure matter of historical accident, this distinction between the gift of land and the gift of chattels.

The Traditional Element in the Law—Its Advantages.—On the other side, what are the advantages of this traditional body of law when we come to use it as juridical material for the future? I think there are three that stand out quite as prominently as the difficulties of which I have just spoken.

And I think the one that deserves to be put first as one studies legal history is that the traditional element is our great safeguard against the shaping of the law by class interests. We read very commonly in the periodicals and in the observations of economists and sociologists and organs of class interest to the contrary, but I undertake to say that legal history completely vindicates our tribunals of that charge. The habit of referring all questions to principle, the settled habit of looking at the particular case, not by itself, but as a type of a universal question, the endeavor to make the law conform constantly to ideals or right and justice, have always stood between tribunals and the pressure of class interest. One has only to see how the English mediaeval courts barred entails, cut off the tying-up of the estates of the English nobles in the face of the statute *de donis,* and in the face of the overwhelming interest of the dominant class in mediaeval society; he has only to see how the English courts to-day in the Osborne and the Taff Vale cases have stood out for principle and reason and system in law against a Parliament dominated by the representatives of organized labor, to see that neither the great in position nor the great in numbers have been able to swerve the traditional element of the law from the path marked out by science, by system, by logic. That then I should put as the great advantage.

But second only to that is the advantage that the rules which make up the traditional element of a legal system represent actual experience in the adjudication of concrete causes. They are made inductively, from actual cases; they are not made deductively, by deduction from an abstract principle, to meet the exigencies of an unknown future.

Third I should put as an advantage of the traditional element of the law that it peculiarly combines certainty and flexibility in the administration of justice. It admits of flexibility because it deals with cases one at a time as they arise. It admits of certainty because it proceeds by a logical technique which enables you, given the premises, to determine the results in cases as they arise with a reasonable certainty.

Growth of Law by Means of Tradition Not Legislation.—For these reasons then I take it in all the growing periods of law and legal history, the growth has taken place, not through legislation, but through the traditional element of the law. The classical stage of the Roman law in the third century was a stage of development of the law by the Roman jurists through a theory of natural law, not through legislation; the making over of English law through the court of chancery was the work of lawyers and judges, not of Parliament; the making over of English law in the eighteenth century through the law merchant was achieved by Lord Mansfield and his colleagues in the courts, not by Parliament; the making over of the common law of England into a law for America in the nineteenth century was the work, not of American legislatures, but of American courts.

If we turn to the imperative element of the law, the first thing that comes to our notice is that that is relatively a new feature of legal system. Conscious, deliberate, intentional lawmaking is something relatively modern. The beginnings of legislation are not attempts at conscious lawmaking. They are simply attempts at formulating what has been the law already. For a long time the actual making of the law goes forward subconsciously. Perhaps the beginnings of legislation are to be seen in cases where two tribes or two peoples, which formerly had diverse cus-

toms, unite and try to state the common custom of the whole. There it becomes necessary to pick and to choose and to harmonize; an example may be seen in Alfred's law. He had to harmonize, as well as collect and put into one body of law, the law of the different nations or states which made up his Anglo-Saxon kingdom. And he tells us he did consciously amend and select, but he says, "I durst not set down aught of mine own." He made nothing. So men begin simply by picking and choosing and possibly amending. Then, at a later stage, when men are still not prepared to deliberately state or deliberately change, they find they can change, without the appearance of change, by altering the written record. It is not, however, until a relatively late date, it is not until the maturity of the law, that we find the lawmaker deliberately making something new and establishing it as something that has been made consciously for the first time.

Two Theories of the Nature and Origin of Law.—Along with these two elements in a developed system of law we find not unnaturally two theories as to the nature and origin of law. On the one hand we find a theory that law is something which can be found but cannot be made, something which expresses the principles of right and justice which are discovered, but something that must rest upon reason, upon conformity to right and justice, not upon authority. That is the Germanic tradition; that is the mediaeval tradition; it is the common law tradition in which you and I have been trained. On the other hand, there is what might be called the political tradition, the conception of law as something that is and may be made consciously, as something which rests upon the authority of the state, as something which is simply the expressed will of the sovereign. That is the Roman tradition, although it would be more just to speak of it as the Byzantine tradition; it is the tradition of the student of political science: it is, I suppose, the theory of the American legislator to-day.

Let us notice where that theory comes from and it will aid us in appraising it. We speak of it as Roman. It is not Roman. The *populus Romanus,* when it legislated, did not conceive for a moment that it made something that rested simply upon authority. The Roman people conceived that they declared that they were discovering and declaring; and it was not until the great political change, from the period of Diocletian on, when the political theory of the Roman empire was that the will of the Emperor had the force of law, that men conceived of law as simply the will of the sovereign. That conception of law, as the expressed will of the sovereign, was handed down to mediaeval Europe through Justinian's codification. It was taken up by the great publicists of seventeenth century France, who saw in the French King the living type of the Byzantine Emperor, and wrote their books on public law accordingly. They made the conception of law as the will of the sovereign the very center of their theories. The eighteenth century transferred this idea from the sovereign King to the sovereign people. Thus it came full blown to America and has taken form with us in the theory of law as will and will alone; in the theory of law as the will of the people or the people's representatives, so that the words, "Be It Enacted," can support and justify anything which follows.

Conflict Between the "Universal" and "Political" Theories As to the Origin of Law.—With these two theories of lawmaking in actual operation in the community, I need not say to you inevitable conflict arises between the lawyer's theory and the political theory. The lawyer thinks of law as something which on the whole is found but not made; he thinks of law as the expression of principles, as having its sanction, or rather the basis of its authority, in reason and principle; and whenever he finds anything that runs con-

trary to these, he hesitates to admit that it is or can be law. The people, on the other hand, think of law as something which can be made; as something which they do make. They think of rules and principles as significant only as they bear upon them the stamp of the popular will. So that, while the lawyer, with his eye upon universal principle, often thinks he is administering the law, the layman with his eye upon the letter of the law, thinks that he is undoing the law; and if the lawyer is moved to stigmatize everything that does not conform to his theory as lawlessness, the people are quite as apt to stigmatize what does not comport with their theory as usurpation. We must remember that the popular theory, the political theory of law, is as firmly rooted in the minds of the public as the legal theory is in our minds. The layman learns this theory at school; he hears it from the stump, from the Fourth of July platform, from Chautauqua platforms; he reads it in the press, he seldom hears it questioned. The consequence is our law presents continually a clash between these theories, and we are called upon to ask ourselves, is one or the other of them absolutely right or absolutely wrong, or, is there truth in both of them, and must we recognize this truth and perceive a just relation between the finding of law and the making of law?

The "Social" Theory as Offering a Solution.—I must hasten to a conclusion. I would simply venture to suggest an outline of what I conceive must be done here. I think we must abandon both of these absolute theories. The important thing is not the agency that makes the rule, but the end which the rule subserves. The important thing is the securing of the great interests which the law exists to secure. The important thing is the serving of the human ends for which legal systems are set up. Some of these interests are better secured by the authoritative declaration of rules in advance; some of them can only be secured by experience of the rules which will secure them.

Lord St. Leonards, in commenting on English legislation of the English reform movement, was fond of putting a statute like this, which he said Parliament might enact at any time, "Be It Enacted That the King's loyal subjects may and they are hereby empowered to go forth upon any and all the public roads, streets and highways of the Kingdom in the month of April without umbrellas without getting wet."

We laugh at that statute, but there is much in judicial law-making that is quite as out of touch with this throbbing, living world in which law is to be applied. The point in each case is, we must keep our eye, not upon an abstraction, but upon the end for which that abstraction is framed. And so, in conclusion, I would say the task of the lawyer, of the judge, of the jurist in twentieth century America, is to make law-making and law-finding—yes, and the interpretation and the application of legal rules—take more account, and more intelligent account, of the social facts from which law proceeds and to which it is to be applied. It is the task of the legal scientist of to-day to bring home to the legislator the limitations upon legislative law-making. It is his task also to bring home to the judge the possibilities of judicial finding of the law, for, if—and it is true—the judicial law-maker has a more limited field than the legislative law-maker, it is none the less true that he has great possibilities in that capacity, as such names as Kent and Marshall and Mansfield and many that I might repeat bear daily witness.

It is true the legislative law-maker makes a rule only for the causes of the future. Therefore, he may make new premises; he may shape his premises and develop them as he will. The judicial finder of the law, on the other hand, finds a rule to apply to the transactions of the past, and the social interests which require certainty in the administration of justice pre-

clude him from doing more than to take the given premises and develop them by a scientific technique. But this does not absolve the legislative law-maker from seeking for principles or guiding himself by theories. Nor does it absolve the judicial finder of the law from shaping those principles and using that technique to further the social ends for which law exists. So the task of the legal science of to-day is to bring home to the judicial law-maker that he is one of the great builders of the law, and that he has that responsibility of building the law as much to-day as Mansfield had it in the eighteenth century or Coke in the seventeenth; to bring home to all law-makers, legislative and judicial, the responsibility of seeing to it that the laws conform to the social facts to which they are to be applied, a responsibility which rests heavily upon everyone who is called upon to make rules for the administration of justice.

ROSCOE POUND.

Harvard University.

MUNICIPAL CORPORATIONS—INJURY TO PEDESTRIAN.

DAHMER v. CITY OF MERIDIAN, et al.

Supreme Court of Mississippi, Division A.
April 10, 1916.

71 So. 321.

A city was not liable for injuries to a sidewalk pedestrian, upon whom a billboard was blown which was on private premises and not obviously dangerous to pedestrians; the city having no notice that the board was defective or dangerous and it appearing to be reasonably safe.

Appeal from Circuit Court, Lauderdale County; J. L. Buckley, Judge.

Suit by Claude L. Dahmer against the City of Meridian and another. From a judgment for defendants, plaintiff appeals. Affirmed.

One Hester was the owner of a lot in the city of Meridian upon which a billboard had been erected by one Hopper, who afterwards died. The property was afterwards leased to one Louin, who entered into a contract with appellee Ziller, whereby Ziller secured the privilege of using said billboard. The billboard was fastened to posts and was about 2½ feet from the sidewalk. Appellant, while walking along the sidewalk holding an umbrella over him to protect him from the rain, was struck by the billboard, which was blown over across the sidewalk, and received the injuries sued for. The suit was brought against the city of Meridian and Ziller jointly, being an action in tort for damages for personal injuries, plaintiff claiming that the accident was caused by the negligence of Ziller in maintaining an insecure and unsafe billboard, and that the city was liable for permitting Ziller to maintain a dangerous billboard in close proximity to the sidewalk.

The city of Meridian gave notice under a plea of general issue that it would show that the billboard was located on private property, and was not apparently dangerous to pedestrians, and that no complaint had been made of its being insecure, and that it was not a nuisance, and that it was not imminently and obviously dangerous, and that the city was without authority to abate it as a nuisance, and that the city was therefore not liable.

Ziller defended upon the grounds that he had only leased the privilege of posting signs on the billboard which did not belong to him, was not erected by him, and was not his land or land leased by him, and that nothing he had done had made the billboard less secure.

After the plaintiff had introduced his evidence, there was a peremptory instruction for defendants, and plaintiff appeals.

HOLDEN, J. This is an apeal from the Circuit Court of Lauderdale county. The appellant, Claude L. Dahmer, plaintiff in the court below, sued the city of Meridian and Fred R. Ziller for damages for personal injuries, on account of a billboard being blown over on him while walking on the sidewalk. After the plaintiff had introduced all his evidence, and rested, the court, on request of the defendants, granted a peremptory instruction to the jury to find for the defendants, from which action of the court the plaintiff appeals here.

[1, 2] First: The testimony introduced by the plaintiff in the lower court makes this case, on the facts, so similar to the case of Reynolds v. Van Beuren, 155 N. Y. 120, 49 N. E. 763, 42 L. R. A. 129, that we refer to the facts stated in that case, and hold here that the rule announced there is sound and reasonable, and we adopt it as the law in the case before us. If the appellant is entitled to any redress for the

personal injuries received by him, it seems clear to us that he should have proceeded against the lessee in possesion of the property, and not against the appellees.

Second: The record discloses no testimony tending to show that the city of Meridian was guilty of any negligence whatever. The billboard which fell upon appellant was on private property, and, if we concede that the city had authority, and that it was its duty to abate an obvious danger on private premises, this was not an obvious danger to pedestrians using the sidewalk of the city. The city had no notice whatever that the billboard was defective or dangerous; on the other hand, it appeared to be reasonably safe. Temby v. City of Ishpeming, 146 Mich. 20, 108 N. W. 1114; City of Meridian v. Crook, 69 South. 182, L. R. A. 1916A, 482.

Affirmed.

NOTE—*Municipal Liability from Insecure Billboard Injuring Street Passer*.—There seems a difference in the cases of overhanging signs or other objects suspended above a street and where injury arises from a wall or other structure on the premises of an abutting owner and near the street causing injury to passers-by. And this difference lies frequently in the statutory duty of a city in the keeping of streets safe and in its power to abate, summarily, nuisances.

In Temby v. Ishpeming, 140 Mich. 146, 103 N. W. 588, 69 L. R. A. 618, 112 Am. St. Rep. 392, it was held that a city is not liable for injuries to a pedestrian on the street from the fall of a billboard insecurely placed near the edge of the street, under a statute requiring it to keep its streets reasonably safe and fit for travel.

It was claimed there was liability for a nuisance, which the city ought to have abated.

It was said: "This court has never gone so far as to hold that the statute requires the city to protect a traveler against dangers which result entirely from the use made of abutting premises by their owners and which cannot be avoided by barriers or some other effective mode of construction of the highway. It may be reasonably said that a highway is not reasonably safe which has no barriers separating it from a pit or cellar on adjoining premises, and in such a case the liability rests not on a failure to abate a nuisance but an inadequate highway. * * * If nuisances exist on private premises, it is, in most cases, necessary that legal proceedings be instituted to abate them, and we are of the opinion that meantime the city cannot be held liable for the consequence of their maintenance. Redress in such cases must be had against the owner." This case came before the court again and the former ruling was reaffirmed. Same v. Same, 146 Mich. 20, 108 N. W. 1114.

In Cason v. Ottumwa, 102 Iowa 99, 71 N. W. 192, a billboard which rested on the sidewalk was blown down, and citing a prior case, it was said that keeping a street safe did not mean merely its surface, but to what was in control of the city where there is danger to those on the street. This case assumes control by the city of the billboard because of where it was placed.

In Oak Harbor v. Kallagher, 52 Ohio St. 183, 39 N. E. 144, a billboard was built on the line between the adjoining property and the street, but not interfering with street travel, was not a nuisance, it being constructed in a good, substantial manner. Where an unprecedented windstorm came up and it fell, there was no liability by the city.

In Shippey v. Kansas City, 254 Mo. 1, 162 S. W. 137, a billboard standing right at the edge of the sidewalk, fell on plaintiff. There was strong evidence that the city had actual notice that it was dangerous from being rotten. It was said: "The rule of liability for negligence in cases like this is the same as for defects in the sidewalk itself."

Along the same line of reasoning may be said to be the case of Langan v. Atchison, 35 Kan. 318, 57 Am. Rep. 165, but that shows close proximity of a billboard to the sidewalk.

It seems to us that where the billboard is definitely away from the street, that it would seem to be a trespass on private premises for the city to exercise any control thereover, there is no duty to protect a pedestrian on the street, unless the billboard is such a nuisance that the city should cause it to be abated. As to what would be such an urgency would be different in one state of case than in another. If it stood immediately on the edge of a sidewalk of a much traveled street, the urgency would be greater than if it stood back from the street or on a street upon which there was not so very great travel. And then the presumption of notice would arise more readily in the one case than in the other. We do not think, however, that the rule of liability is as stated in the Shippey case, *supra*, but rather as in the Temby case. C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION, No. 100.

Divorce—Arrangement to sue in distant state upon existing cause not recognized in present domicile—If carefully conditioned, not disapproved by majority, but wholly disapproved by minority.

Husband and wife, residents of this state, are not living together; the husband having actually and by express declaration deserted the wife. There is no ground known to the wife on which she could obtain a divorce in New York. Let it be assumed that facts existing at the time of the desertion will give ample grounds for divorce at the instance of the wife in several other states. There has been absolutely no collusion in bringing such facts into existence. The husband, who actively desires a divorce, and his attorney, have requested

that the wife accept a substantial money payment for herself in settlement of all claims for future maintenance and also a substantial fee for her attorney; and in return for these payments, that she go to another state, where existing facts would be grounds for a divorce, and there procure a divorce decree, it being the husband's plan to go to such state and accept service of papers.

Will you kindly give me the opinion of your committe on the propriety of such an arrangement?

ANSWER, No. 100.

In the opinion of a minority of the committee, it would be unprofessional for a member of our bar to advise, or assist in, the arrangement suggested, the object of which is to escape the operation of the laws of this state;

But a majority is of the opinion that the arrangement is not inherently improper, provided there is no imposition on the wife, and the arrangement is fully disclosed to the foreign court, and the change of residence is actual and in good faith.

QUESTION, No. 103.

Public Prosecutor—procuring or facilitating newspaper publications respecting his official activities—not necessarily improper, but due caution should be observed.

(a) In the opinion of your committee does Canon 20 of the American Bar Association's Code of Ethics apply to publications by a public prosecuting attorney as to pending or anticipated litigations whereof he has charge by virtue of his office?

(b) Is it proper professional conduct for a public prosecuting attorney to inform the newspapers that the government has evidence tending to convict designated individuals of designated crimes, and that the evidence is laid before the Grand Jury?

ANSWER, No. 103.

(a) The rule expressed in the Canon is a salutary one; but as applied to public prosecuting attorneys it may be subject to exceptions in the public interest. In the absence of a specific statement of facts, the committee is unprepared to answer this branch of the inquiry more definitely.

(b) A prosecuting attorney is not merely a lawyer; he is also a public officer. His duties are intimately connected with the detection of crime and the securing of evidence for convictions and the preservation of public order. We cannot say that in the discharge of his duties there are no instances in which it would be proper for him to make use of newspaper publicity as stated in the question; but in the opinion of the committee, under circumstances which would justify such action, his course should be dictated *solely* by the public interest, and should be taken with due regard to law.

HUMOR OF THE LAW.

Two dusky belles of the Davis avenue district appeared in the Inferior Court one day last week, enacting the roles of complainant and defendant. Both of them were Amazons of apparent physical prowess; but, whereas the defendant showed no marks of strife, the complainant looked as though she had just finished an argument with a 42-centimeter gun.

"What have you women been fighting about?" demanded Judge Chamberlain in his famous cold storage voice.

"She jes' done smacked me down for nuffin at all, judge," declared the complainant, "an' den stomped all ovah me."

"Judge," explained the defendant, "she was pesterin' me, an' she said, if I felt froggy, I could jump."

"And then what happened?" inquired the judge.

"Dar's what happened," replied the Amazon, pointing dramatically to her bedraggled companion. "I jumped."—*The Docket.*

Two witnesses were at the Waterford assizes in a case which concerned long continued poultry stealing. As usual, nothing could be got from them in the way of evidence until the nearly baffled prosecuting counsel asked:

"Will you swear, Pat Murphie, that Phady Houligan has never to your knowledge stolen chickens?"

"Bedad, I would hardly swear, but I do know that if I was a chicken and Phady about I'd roost high."—*St. Louis Star.*

Representative Simeon D. Fess, of Ohio, met an old friend in Washington, and they fell to discussing the ravages of time, especially in regard to loss of hair.

"Yes, I have a great prejudice against being bald," remarked Fess' friend, "but I guess I'm elected."

"Well, you know the old story about the big fly and the little fly," said Fess. "The big fly and the little fly were promenading across an expansive bald head, and the big fly remarked to the little fly: 'See this fine wide boulevard here? I can remember when it was nothing but a narrow cowpath.'"—*St. Louis Post-Dispatch.*

WEEKLY DIGEST

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1. **Accord and Satisfaction**—Acceptance.—Where a debt is liquidated and is due, payment and receipt of a less sum is not a satisfaction, in the absence of a release under seal of a new consideration, though the creditor accepts it as satisfaction.—Decker v. George W. Smith & Co., N. J., 96 Atl. 915.

2.——Evidence.—Contention of defendant that dispute as to extra work was settled by payment of a given sum was not sustainable, where it was not shown that the sum was accepted in satisfaction of demand.—Foye v. Lilley Coal & Coke Co., Pa., 96 Atl. 987.

3. **Account**—Pleading and Practice.—That a plaintiff sues at law for the price of goods, the value of work, and the amount of damage to property, does not obligate him to make an accounting in his pleadings in respect to items or credit, the amount of which he is unable to state, which he admits are due defendant.—Mitchell v. Beck, Iowa, 156 N. W. 428.

4. **Adverse Possession**—Cultivation and Improvement.—The requirement of Rev. Codes, § 4043, that the land be "usually cultivated or improved" means that it be cultivated or improved as is usual in the case of similar property, and does not require that a mining mill site be cultivated or inclosed.—Trask v. Success Mining Co., Idaho, 155 Pac. 288.

5.——Tacking Possession.—A landowner adjoining a railroad's right of way, who, when purchasing, had the road's fence, set over on its land, pointed out to her as the boundary, could tack her vendor's possession to her own to make up the 10-year statutory period to establish the boundary at the fence by acquiescence, though her deed excepted the right of way.—Helmick v. Davenport, R. I. & N. W. Ry. Co., Iowa, 156 N. W. 736.

6. **Animals**—Vicious Dog.—The owner of a vicious dog may keep it to protect life and property, but is strictly accountable for any consequential harm to another.—Tubbs v. Shears, Okla., 155 Pac. 549.

7. **Arrest**—Motive.—A private individual, to be warranted in making an arrest when a felony has been committed, must be actuated by good motives with a view of assisting in bringing to justice a felon, instead of being actuated by ulterior motives.—Safran v. Meyer, S. C., 88 S. E. 3.

8.——Warrant.—A police officer may arrest without warrant whenever he has a well-founded and reasonable belief, based on facts, and circumstances presently existing, that a felony is being committed, although such belief is groundless, or he may arrest upon suspicion any person guilty of a recent felony, whether the officer be advised thereof or not.—State v. Whitley, Mo., 183 S. W. 317.

9. **Arbitration and Award**—Estoppel.—Receipt by one party of that which is awarded to him estops him from refusing to comply with the award in favor of the other party on the plea that the award is illegal.—Murray v. Hawkins, Ga., 87 S. E. 1068.

10. **Arson**—Evidence.—Evidence of a threat made by accused held admissible, where the threat was reasonably capable of being applied to the person whose domicile was afterwards burned.—Harris v. State, Ga. App., 88 S. E. 121.

11. **Assault and Battery**—Abusive Language.—Defendant's use of grossly vulgar and abusive language in plaintiff's presence in her home and his threats to shoot her husband held to constitute prima facie an unlawful assault, regardless of the purpose for which he went to her home.—Jeppsen v. Jensen, Utah, 155 Pac. 429.

12.——Automobile.—Assault and battery may be committed by striking another with an automobile intentionally, or by driving recklessly against another vehicle in which persons are riding.—Tift v. State, Ga. App., 88 S. E. 41.

13.——Provocation.—In action for assault, provocation of such a character as to make the impulse irresistible and to be solely responsible for the assault will not affect the compensatory damages.—Cooper v. Demby, Ark., 183 S. W. 185.

14. **Attorney and Client.**—Implied Power.—In mortgagee's action to foreclose, her attorney had no implied power to make a stipulation in effect a contract enforceable against the mortgagee.—Rothberg v. Hebron, N. Y. Sup. Ct., 157 N. Y. Sup. 788.

15.——Neglect.—Parties represented by competent counsel, instructed to appeal, are bound by acts or neglect of counsel.—Linehan v. Linehan, Mass., 111 N. E. 901.

16.——Presumption.—In a shipper's action to enforce a compromise and settlement of a damage case, it will not be presumed that the attorney making the settlement for defendant was without lawful authority, and slight evidence will be deemed sufficient to take the case to the jury on that question.—St. L. & S. F. R. Co. v. Leger Mill Co., Okla., 155 Pac. 599.

17. **Bankruptcy**—Allowance of Claim.—Claim which lacked statement of official character of officer signing jurat, and was returned to creditor's attorney for correction and not redelivered to referee for two years, held properly allowed.—In re Haskell, U. S. D. C., 228 Fed. 819.

18.——Burden of Proof.—Though trustee, seeking to compel bankrupts to turn over money, had burden of showing their possession, held that the evidence sustained this burden, and the burden was on the bankrupts to show what became of the money.—In re Graning, U. S. C. C. A., 229 Fe. 370.

19.——Concealment.—Bankrupts, who kept no record of indebtedness, except by filing invoices or bills, held to have done so with intent to conceal financial condition, within Bankruptcy Act, § 14b (2).—In re Josephson, U. S. D. C., 229 Fed. 272.

20.——Distribution of Estate.—One does not participate in distribution of bankrupt's estate merely because instituting the bankruptcy proceedings and being allowed counsel fees for litigation under leave of court.—John Nix & Co. v. Andrews, N. J., 96 Atl. 1012.

21.——Dormant Judgment.—Where sale under execution of property remaining in bankrupt's possession was several times adjourned with consent of execution creditors, held that

executions were dormant as against trustee, under Bankr. Act, § 47a, as amended by Act June 25, 1910, § 8.—In re Monarch Acetylene Co., U. S. D. C., 229 Fed. 474.

22.——Dummy Corporation.—Where there was evidence that parties other than bankrupts were interested in alleged dummy corporation, held that trustee should have proceeded against corporation for surrender of its property in order that such parties might be protected.—Cohen v. Bacharach, U. S. C. C. A., 229 Fed. 385.

23.——Evidence.—Referee's disposition of claim on contract for sale of automobile starters, which never got beyond experimental stage, by treating contract as abandoned and allowing for expense of experiments, held to constitute substantial justice.—In re Louis J. Bergdoll Motor Co., U. S. D. C., 229 Fed. 262.

24.——Fraud.—To make a transfer fraudulent as to creditors os as to entitle the trustee in bankruptcy to recover the property, bankruptcy or insolvency at time of conveyance is not essential, where there is fraud and intent to defraud creditors known to the grantee.—Buttz v. James, N. D., 156 N. W. 547.

25.——Hindering Creditors.—A lien on personal property levied upon under execution four months before bankruptcy is not lost, unless the execution creditor does something to hinder, delay or defraud other creditors, but no actual intent need be shown.—In re Zeis, U. S. D. C., 229 Fed. 472.

26.——Insurance Policies.—Where, after commencement of bankruptcy proceedings, but before receiver was appointed, the bankrupt transferred insurance policies to a state court receiver, the court should require the policies to be transferred to the bankruptcy receiver.—Davis v. Williams, Ga., 87 S. E. 1050.

27.——Preference.—Under Bankr. Act §§ 60b, 64b (3), payment of pre-existing debt held preferential though debt was for legal services, when not directly connected with the bankruptcy proceeding.—Magee v. Fox, U. S. C. C. A., 229 Fed. 395.

28.——Preference.—Under Bankr. Act, July 1, 1898, §§ 47a (2), 60a, 60b, as amended by Act, June 25, 1910, §§8, 11, mortgages given and promised more than four months before bankruptcy for a present consideration, held voidable preferences, where they were not acknowledged until within the four months.—In re Caslon Press, U. S. C. C. A., 229 Fed. 133.

29.——Recovery of Property.—In suit to recover property sold under execution within four months before bankruptcy, or its value, value at time of execution sale held to be adopted as basis of decree.—Dreyer v. Kicklighter, U. S. D. C., 228 Fed. 744.

30. **Banks and Banking**—Depositor.—Money deposited in a bank subject to check becomes the absolute property of the bank, and the latter becomes a debtor to the depositor in an equal amount.—Manufacturers' Nat. Bank v. Chabot & Richard Co., Me., 96 Atl. 836.

31.——Indorsement.—A contract by the seller of 55 per cent of the stock of a bank to become special indorser on all notes held by the bank, to 55 per cent thereof, on condition to be performed by the bank, a special deposit being made to secure performance, held a contract between the seller and the bank rather than between him and the buyer, where the bank knew of the contract and acted upon it.—First State Bank of Indiahoma v. Menasco, Okla., 155 Pac. 261.

32.——Notice.—That checks payable to an administrator are offered for deposit and by his direction credited to his individual account will not charge the bank with notice of fraudulent intent to misappropriate trust funds, or require it to supervise subsequent distribution of the fund, or render it liable for the administrator's default.—United States Fidelity & Guaranty Co. v. Home Bank for Savings, W. Va., 88 S. E. 109.

33. **Beneficial Associations** — Exhausting Remedy.—A member of a beneficial association cannot resort to the courts for relief against suspension before exhausting his remedies within the association. — Most Worshipful United Grand Lodge of F. & A. M. of Maryland v. Lee, Md., 96 Atl. 872.

34. **Bills and Notes**—Bona Fide.—Where the plaintiff accepted a check which was apparently in good form and signed by the defendant after being called on the telephone by a man whom he believed to be the treasurer in the defendant company, he was a bona fide holder for value without notice.—Phillips v. A. W. Joy Co., Me., 96 Atl. 727.

35.——Certificate of Deposit.—Certificates of deposit whereby a bank agreed within fixed times to pay sums certain at an agreed rate of interest to the depositor held promissory notes.—Folk v. Moore, S. C., 88 S. E. 18.

36.—— Contribution. — Where stockholders agreed to indorse corporate notes on condition that credit should not exceed a certain amount, a stockholder who with notice that the limit was exceeded indorsed a note is liable for contribution, but, though an officer without such notice, he is not so liable.—Train v. Emerson, Ga., 87 S. E. 1072.

37.——Exchange.—The purchaser of a cable transfer of money cannot recover the difference in exchange between the date of purchase and time of delivery, where the delay was not the fault of the seller.—Strohmeyer & Arpe Co. v. Guaranty Trust Co. of New York, N. Y. Sup. Ct., 157 N. Y. Sup. 955.

38.——Forgery.—One in whose name a check was forged and paid by her bankers on presentment by the hotel company, which cashed it, had no cause of action against the hotel company, having her right of recovery against her bankers.—Bergstrom v. Ritz-Carlton Restaurant & Hotel Co., N. Y. Sup. Ct., 157 N. Y. Sup. 959.

39.——Fraud.—Where plaintiff's agent in good faith promised the defendant's credit in order to secure their signatures to notes, the fact that plaintiff later refused the credit promised was not fraud, invalidating the notes.—Wm. R. Moore Dry Goods Co. v. Ainsworth, Miss., 70 So. 885.

40.——Indorser.—Where a lumber company's note, signed and indorsed in blank, and given to a party with authority from an indorser to use it to assist in financing the company and to pay its indebtedness, was used to take up another note of the company's, which had been given for coal furnished a railroad, the indorsers were liable on the note.—Devoy & Kuhn Coal & Coke Co. v. Huttig, Iowa, 156 N. W. 412.

41.——Innocent Purchaser.—Defendants, who, on the holder's representations that he had lost the original, executed new notes and paid them, cannot defeat the rights of an innocent holder of the original notes to whom they had been fraudulently transferred.—Farmers' Bank v. Crawford, S. C., 88 S. E. 13.

42.——Notice to Indorser.—An agreement and indorsements of commercial paper, obtained from a man 90 years old by his son-in-law, held void as to a coindorser chargeable with notice of the confidential relations and influence of the son-in-law, where they were executed without intelligent understanding or competent and independent advice.—Bensel v. Anderson, N. J. Ch. Ct., 96 Atl. 910.

43. **Boundaries**—Acquiescence.—A boundary line may be established by erection of a fence and recognition thereof and acquiescence therein by adjoining landowners, independent of adverse possession, except the statutory 10-year period.—Helmick v. Davenport, R. I. & N. W. Ry. Co., Iowa, 156 N. W. 736.

44.——Mistake and Fraud.—The building of a fence does not conclude adjoining landowners as to the boundary line, if it was built for temporary purposes without intent to make it the permanent boundary, or was the result of mistake or fraud.—Perich v. Maurer, Cal. App., 155 Pac. 471.

45. **Bribery** — Indictment.— An indictment charging attempted bribery in that the accused offered a deputy sheriff money to permit shipments of liquor to reach the accused without seizure, held insufficient, for failing to allege that the liquor was intoxicating, or intended for sale in violation of law.—State v. Beliveau, Me., 96 Atl. 779.

46. **Broker**—Commissions.—Where a firm is employed as exclusive agent, and is not given

the exclusive right to sell property, the owner may sell by his own efforts without becoming liable for commission.—Snook v. Page, Cal. App., 155 Pac. 107.

47.——Completion of Sale.—Where a contract between a broker and the owner specified that the purchaser procured should pay the broker's commission, the broker could not recover commissions from the owner under the contract, though he refused to complete a sale to the purchaser procured.—Robinson v. Oklahoma Fire Ins. Co., Okla., 155 Pac. 202.

48. **Cancellation of Instruments**—Intervention.—Intervener, whom decedent owed for work done, could enforce, so far as it affected her, the trust to pay "all present just debts, charges and expenses" of decedent decreed in the latter's suit to set aside a deed and for a reconveyance, though she did not accept the trust in writing.—Rice v. Merrill, Mass., 111 N. E. 860.

49. **Carriers of Goods**—Bill of Lading.—Railroad delivering carload of beans to defendant on his innocent presentation of false bill of lading held entitled to recover against defendant, on ground of misrepresentation of a material fact by mistake, upon which it had been induced to act.—Louisville & N. R. Co. v. McKay & Morgan, Tenn., 182 S. W. 585.

50.——Corpse.—Son, undertaking to bury mother's body and assuming responsibility for funeral expenses and transportation charges, held entitled to sue carrier for mishandling of the corpse and box containing it in his presence.—Wall v. St. Louis & S. F. R. Co., Mo. App., 182 S. W. 1057.

51.——Discrimination.—Act Feb. 4, 1887, § 15, as amended by Act June 18, 1910, § 12, empowering the Interstate Commerce Commission to prevent unlawful discrimination, authorizes the commission to prescribe the maximum allowance out of the joint rates which trunk line railways may make to tap lines owned by persons owning timber and mills which they principally serve, though no jont rate was fixed either by the commission or by the carriers, and they had not been afforded an opportunity to agree in respect to the division.—O'Keefe v. United States, U. S. Sup. Ct., 36 Sup. Ct. 313.

52.——Inspection.—A railroad company properly allowed inspection, where the shipper sent out circular letters that it would allow inspection, but the bill of lading prohibited inspection without shipper's written permission.—Elm City Lumber Co. v. Atlantic Coast Line R. Co., N. C., 88 S. E. 139.

53.——Live Stock.—A railroad can decline to accept a shipment of live stock by showing that its stockyard, where it is required to rest cattle in transit by federal statute, is infected with a contagious disease, of which it had no knowledge in time to remedy the condition.—Nashville, C. & St. L. Ry. v. Farrell & Braley, Ala. App., 50 So. 986.

54.——Live Stock.—A shipper of live stock who set up a claim for damages for loss of a horse, not having paid the freight or feeding charges, held not entitled to recover the statutory penalty, of $50 for nonpayment of his claim.—Southern Ry. Co. v. Kimball, S. C., 88 S. E. 14.

55.——Negligence.—Plaintiff held not entitled to recover for killing of cattle placed by him in defendant railroad's stockyard as invitee and without notice, and left no guard; there being no obligation on defendant to furnish a guard.—Smith v. Maine Cent. R. Co., Me., 96 Atl. 778.

56.——Warehouseman. — Express company, which on consignee's refusal to take a personal delivery and his direction to leave on station platform put goods in station to protect from trespassers, held liable only as warehouseman, so that on burning of station without its fault it was not liable for their value.—Southern Express Co. v. Potter Bros., Tenn., 183 S. W. 157.

57. **Carriers of Passengers**—Alighting.—It cannot be said as a matter of law that it is negligent to alight from a moving car, but the circumstances attending it and the speed of the car make it a question for the jury.—Johnson v. Portland Ry., Light & Power Co., Ore., 155 Pac. 375.

58.——Taxicabs.—A taxicab company engaged in transporting passengers and baggage in and about a city held to be a common carrier governed by the principles applicable to carriers doing business on a larger scale.—Brown Shoe Co. v. Hardin, W. Va., 87 S. E. 1014.

59.——Warning of Strike.—Where interurban carrier sold ticket to city without warning of a strike preventing its entry therein and put off passenger at outskirts of city where there was no accommodation, she was not limited to recovery for loss of time and expense, but could recover for discomfort directly resulting.—Louisville & N. Ry. & Lighting Co. v. Comley, Ky., 183 S. W. 207.

60. **Chattel Mortgages**—Foreclosure.—A purchase-money note for an amount exceeding $100, containing merely reservation of title to the personalty sold, cannot be foreclosed as a mortgage.—Puett v. Edwards, Ga. App., 88 S. E. 36.

61. **Constitutional Law**—Due Process of Law.—A presumption of negligence on proof of the killing of an animal on railroad tracks does not work a deprivation of defendant's property without due process of law.—Moorer v. Atlantic Coast Line R. Co., S. C., 88 S. E. 15.

62.——Due Process of Law.—The opportunity of landowners within a proposed district to be heard as to benefits, afforded by such acts is no less sufficient to satisfy the requirements of due process of law, because the particular road to be improved is yet to be selected.—Embree v. Kansas City & Liberty Boulevard Road Dist., U. S. Sup. Ct., 36 Sup. Ct. 317.

63.——Interest in Controversy.—No one may question the validity of a statute unless his interests have been, or are about to be, prejudicially affected by its operation.—Barth v. Pock, Mont., 155 Pac. 282.

64. **Contracts**—Public Policy.—All agreements for pecuniary considerations to control the business operations of the government are void as against public policy, without reference as to whether improper means are attempted or used in their execution.—Kuhn v. Buhl, Pa., 96 Atl. 977.

65. **Copyrights**—Common Law Rights. — The publication of a book or play, in order to obtain a copyright, is a waiver of the author's common-law rights thereunder.—O'Neill v. General Film Co., N. Y. Sup. Ct., 157 N. Y. Sup. 1028.

66.——Motion Pictures.—Assuming that publisher of story held copyright as trustee for author, preliminary injunction against companies acquiring motion picture rights without notice of author's rights held properly denied, in view of Rev. St. § 4955.—Brady v. Reliance Motion Picture Corp., U. S. C. C. A., 229 Fed. 137.

67. **Corporations**—Evidence.—Evidence that person having business with corporation called at principal office, was shown to contract department, and introduced to vice-president, apparently in charge, will support inference of his agency for corporation.—City of Bridgeton v. Fidelity & Deposit Co. of Maryland, N. J., 96 Atl. 918.

68. **Covenants**—Restrictions.—A restriction on the use of land fronting on navigable waters extends over lands afterwards acquired by accretion.—Bridgewater v. Ocean City Ass'n, N. J. Ch. Ct., 96 Atl. 905.

69. **Customs and Usages**—Evidence.—In an action for price of lumber sold and for incidental expense, the contract containing no stipulation as to inspection and shortage, evidence was admissible to show a custom in the lumber business as to inspection, report of defects and adjustment.—O. H. Folley & Co. v. Smith, S. C., 88 S. E. 24.

70. **Customs Duties**—Prize Fights.—Negatives of prize fight, from which positives are to be made and exhibited before members and guests of clubs, etc., without limitation as to number of guests, held excluded from importation by Act July 31, 1912, as supplemented by Act Oct. 3, 1913, c. 16, par. 380, 38 Stat. 151.—Kalisthenic Exhibition Co. v. Emmons, U. S. C. C. A., 229 Fed. 124.

71. **Descent and Distribution**—Advancement.—An amount of her mother's money used by a daughter in purchasing a house, for which such daughter signed a receipt acknowledging the amount as a payment to her in advance out of her expectation in the mother's estate, the mother understanding the transaction, and not thereafter pressing the daughter for repay-

ment, held an "advancement" to the daughter. —Hayes v. Welling, R. I., 96 Atl. 843.

72.——Contract.—Where heirs who had received a conveyance of land from the intestate in consideration of their promise to quitclaim to the other heirs as to other property, they were not relieved from so doing because all heirs did not require them to do so.—Stennett v. Stennett, Iowa, 156 N. W. 406.

73. **Divorce**—Cruelty.—A husband who, on one or two occasions, spat at or on his wife, is not guilty of the matrimonial offense of cruelty.—Calichio v. Calichio, N. J., 96 Atl. 658.

74.——Contract of Marriage.—Where a marriage was merely one of convenience, and the parties were unable to reside together amicably, held that neitner party was entitled to a divorce.—Spady v. Spady, Ore., 155 Pac. 169.

75. **Easements**—Burden of Proof.—Before an applicant can have obstructions removed from a private way, he must show, not only an uninterrupted use for more than 7 years, but that the way is not more than 15 feet wide, that he has kept it open and in repair, and that it is the same 15 feet originally appropriated.—Forrester v. McKaig, Ga., 87 S. E. 1060.

76. **Electricity** — Electric Service.—Where electric service was discontinued for default in payments by customer while he had a sum on deposit as collateral security, the company was entitled to recover its meter and electric lamps from the customer.—Georgia Ry. & Power Co. v. Peck, Ga. App., 88 S. E. 33.

77. **Eminent Domain**—Abutting Owners.—Under the general law of eminent domain consequential damages to abutting land are not recoverable, except where a part of a tract is taken, and the value of the remainder diminished.—Gaylord v. City of Bridgeport, Conn., 96 Atl. 936.

78.——Damages.—Where a railway company has appropriated and improved low vacant land, and thereafter sues to expropriate it, the value of the land is to be taken as of the date of commencement of suit, without regard to the company's improvements.—New Orleans Ry. & Light Co. v. Lavergne, La., 70 So. 921.

79.——Public Use.—The taking of land by a telephone company for the construction and operation of its line is not a taking for a private use.—Mitchell v. Southern New England Telephone Co., Conn., 96 Atl. 966.

80. **Estoppel**—Standing By.—Where plaintiff, who sold a cow, reserving title until the purchase-money note was paid, stood by at a public sale and allowed the buyer's vendee to sell the animal to defendant without asserting his title, held not to estop him from claiming the animal.—Jones v. Savin, Del. Sup. Ct., 96 Atl. 756.

81. **Exchange of Property**—Rescission.—Although representations were made by defendant as to the surface conditions of land offered in trade, yet, if plaintiffs did not make the trade relying thereon, but went upon the land and had a fair opportunity to examine it, they could not demand rescission on the ground of such representations.—Windedahl v. Harris, S. D., 156 N. W. 489.

82. **Executors and Administrators**—Assignment of Interest.—The only interest an administrator has is to see that the estate is preserved for the creditors, and not wasted if there are heirs whose interest he is bound to protect, but he is not a guardian for the heirs, and cannot complain if an heir assigns or disposes of his interest.—Dunn v. Wallingford, Utah, 155 Pac. 347.

83.——Commissions.—Where the same trust company was appointed executor and trustee, it was entitled to commissions in both capacities.—In re Howard's Estate, N. Y. Sup. Ct., 157 N. Y. Sup. 1114.

84. **Extradition** — Evidence.— One charged with crime in a foreign state from whence he came into the state of the forum will not, having been arrested for extradition, be liberated on evidence showing alibi; that being a matter for the foreign court's determination.—Edmunds v. Griffin, Iowa, 156 N. W. 353.

85. **Frauds, Statute of**—Suretyship.—The statute of frauds, invalidating an oral agreement of suretyship in favor of the creditor, did not effect a contract whereby the purchaser of timber, as part of the consideration, orally agreed to pay off a judgment pending against the seller.—Price v. Harrington, N. C., 87 S. E. 986.

86. **Fraudulent Conveyances** — Intent.—The sale of his farms by a judgment debtor to a creditor at a price which was inadequate to the knowledge of both parties and which, likewise to their knowledge, rendered the debtor insolvent, was fraudulent, as to the judgment creditor, to the extent of the difference between the price paid and the value of the land, though there was no intent to defraud.—Nolan v. Glynn, Iowa, 156 N. W. 426.

87. **Highways**—Wantonness.—Persons traveling in automobiles or buggies have the lawful right to use the highway, but should not, without lawful excuse, intentionally, wantonly, or recklessly drive their vehicle against that of another, to the injury of the other.—Tift v. State, Ga. App., 88 S. E. 41.

88. **Infants**—Disaffirmance.—An infant, entering into a contract for purchase of books, had an absolute right to disaffirm, and tender back the books.—Grolier Soc. of London v. Forshay, N. Y. Sup. Ct., 157 N. Y. Sup. 776.

89. **Insurance**—Change in Possession.—A provision that a change in possession of the property insured against fire should avoid the policy applies rather to the person than the location of the property.—Steil v. Sun Ins. Office of London, Cal., 155 Pac. 72.

90.——Estoppel.—Where a policy is delivered to insured, insurer is estopped from denying, after a loss that an unsigned supplement attached to it is a part thereof, notwithstanding a provision of the policy to the contrary.—Curran v. National Life Ins. Co. of United States, Pa., 96 Atl. 1041.

91.——Mortgagor and Mortgagee.—The mortgagor and mortgagee have several and distinct interests in the premises mortgaged, which either may insure for his own benefit.—Gould v. Maine Farmers' Mut. Fire Ins. Co., Me., 96 Atl. 732.

92.——Non-Forfeiture.—Under an "automatically non-forfeitable clause" held that on insured's failure to pay a premium, it was the company's duty to charge against the policy as a loan the amount due for that premium, and thus retain the policy in force for a length of time authorized by the "table of cash loans and guaranteed surrender value" contained in the policy, though the premium was represented by a note.—Perkins v. Empire Life Ins. Co., Ga. App., 87 S. E. 1094.

93.——Waiver.—A "waiver" is the intentional relinquishment of a known right; it is not essential to a waiver that the party claiming it should have been misled to his detriment by the insurer's conduct.—Lee v. Casualty Co. of America, Conn., 96 Atl. 952.

94.——Waiver.—That a fraternal insurer accepted checks in payment of assessments mailed on the last day of the month in which they could be paid shows no waiver of the provision for payment within the month under penalty of forfeiture, but merely of the right to demand payment in cash.—Crawford v. North American Union, Mo. App., 182 S. W. 1043.

95. **Intoxicating Liquors**—Municipal Ordinance.—Under a town ordinance prohibiting the storing of intoxicating liquors and their sale, a defendant is guilty who stores and sells a liquid or liquor which is used as a beverage and produces intoxication, irrespective of how the bottle is labeled.—Town of Belton v. Campbell, S. C., 88 S. E. 30.

96.——Recovery for Death.—To authorize a recovery for death resulting from sale of liquor to decedent, the liquors furnished need not be the sole or even the principal cause of the injury.—Moran v. Slattery, Neb., 156 N. W. 663.

97. **Jury**—Quashing Panel.—Where a majority of the names put into a jury box were persons residing in the supervisor's district in which a homicide occurred, the court erred in refusing to quash the jury box.—Eddins v. State, Miss., 70 So. 898.

98. **Justices of the Peace**—Surplusage.—The words "by default" in a justice judgment are to be treated as surplusage, the record showing

it was after hearing and considering plaintiff's proofs and allegations under oath, at the day to which adjournment had been had by mutual consent.—Gears v. Ryan, Del. Sup. Ct., 96 Atl. 756.

99. **Landlord and Tenant**—Contract.—Where land was rented verbally, and, after entry by the tenant, the landlord stated that as long as the tenant paid her rent she could have the place, the contract was not unilateral.—Hamlett v. Coates, Tex. Civ. App., 182 S. W. 1144.

100. **Marriage**—Annulment.—Entering into marriage with the intention to abandon the wife is a fraudulent misrepresentation, which entitles her to an annulment.—Moore v. Moore, N. Y. Sup. Ct., 157 N. Y. Sup. 819.

101. **Master and Servant**—Course of Employment.—When an accident to an eye, which at first appears not serious, results shortly after in a diseased condition which destroys the sight, the "injury occurred" within the Employers' Liability Act, in view of Rev. St. 1913, § 3693b, when the diseased condition culminated.—Johansen v. Union Stockyards Co. of Omaha, Neb., 156 N. W. 511.

102.——Malpractice.—Under Workmen's Compensation Law (St. 1915, § 2394-25, subds. 1, 2), held that an employe who had made a claim against his employer and received compensation, including medical expenses, on his physician's discovery of defendant's malpractice might elect to hold defendant and to release his employer.—Pawlak v. Hayes, Wis., 156 N. W. 464.

103.——Respondeat Superior.—Where a chauffeur made a side trip of several blocks from a main trip of one block, on an errand of his own, and at a point twice as far from, and beyond, the place to which he was directed to go, as the garage, an accident occurred, he was not in his master's employ, as his acts constituted an abandonment of his service.—Eakin's Adm'r v. Anderson, Ky., 183 S. W. 217.

104.——Statutory Construction.—Liability and compensation statutes cannot be grouped together, since they are the antipodes of labor legislation, having their foundation in essentially different social and economic ideas.—Lewis and Clark County v. Industrial Acc. Board of Montana, Mont., 155 Pac. 268.

105.——Want of Care.—Want of care on part of deceased servant could not be excused on ground of youth, when it appeared that he was an intelligent young man of normal physical and mental development, capable of properly operating his machine, and fully instructed as to its operation.—Jarboe's Adm'r v. Coleman, Ky., 182 S. W. 922.

106. **Municipal Corporations**—Ordinance.—The occupation of soliciting contributions for charitable purposes may be regulated by laws or ordinances providing for reasonable supervision over the persons engaged therein and for the application and use of the contributions to and in purposes intended.—Ex parte Dart, Cal., 155 Pac. 63.

107.——Ordinance.—An ordinance of a township, prohibiting the building of any privy, stables, or stalls nearer a neighbor's residence than the owner's, and providing that no privy shall be constructed within 25 feet of any public street, held unconstitutional as not uniform.—State v. Bass, N. C., 87 S. E. 972.

108.——Quantum Meruit.—Where a city's contract is set aside for irregularity, there may be recovery as on quantum meruit for reasonable cost and expense incurred in prosecuting the contract before legal attack, irrespective of any benefit therefrom.—Armitage v. Essex Const. Co., N. J., 96 Atl. 889.

109. **Negligence**—Imputability.—Negligence of a husband in driving will not be imputed to his wife riding with him, she having no control, and no relation of principal and agent existing.—Fisher v. Elliston, Iowa, 156 N. W. 422.

110.——Last Clear Chance.—The last clear chance doctrine does not apply where both parties are equally negligent at the very time when the injury occurs.—Stephenson v. Parton, Wash., 155 Pac. 147.

111.——Licensee.—Plaintiff, a tailor, going aboard defendant's ship to deliver a uniform to one of its officers, as he had been permitted to do, held a "licensee," to whom defendant owed no duty except to refrain from wanton and willful injury.—Freeman v. United Fruit Co., Mass., 111 N. E. 789.

112.——Proximate Cause.—The act of a child, injured from its clothes catching on fire when it put additional leaves on a fire negligently left in a street by defendant, held not to destroy the casual connection between defendant's acts and the injury.—Davenport v. McClellan, N. J., 96 Atl. 921.

113.——Res Ipsa Loquitur.—That an automobile skids is not of itself evidence of negligence.—Loftus v. Pelletier, Mass., 111 N. E. 712.

114. **New Trial**—Jury.—Where defendant claimed new trial because one of the jurors was defective in hearing, refusal of the court to examine juror, who was not present, where there was a showing by affidavits that his hearing was not such as to warrant the vacation of the verdict, was not an abuse of discretion.—Safran v. Meyer, S. C., 88 S. E. 3.

115. **Nuisance**—Pleasure Resort.—A public pleasure resort and picnic ground is not necessarily a common-law nuisance.—Rockville Water & Aqueduct Co. v. Koelsch, Conn., 96 Atl. 947.

116. **Removal of Causes**—Limitation of Amount.—A suit by a state, for the use of depositors in a state bank, citizens of such state, against a former bank commissioner, now a non-resident, and the non-resident surety on his bond, to recover the several losses of such depositors from the neglect of the commissioner, may not be removed to the federal court for diverse citizenship; none of the individual claims amounting to $3,000.—Title Guaranty & Surety Co. of Scranton, Pa., v. State of Idaho, U. S. Sup. Ct., 36 Sup. Ct. 345.

117. **Robbery**—Evidence.—In a prosecution for robbery, where money was taken from a ticket office, it was done "in the presence of" the station agent, who had been shot, and was lying on the floor of the waiting room, and could hear the noise through the open ticket window, which connected the two rooms.—State v. Williams, Mo., 183 S. W. 308.

118. **Sales**—Evidence.—Where a tenant, an ignorant negro, who was authorized by the landlord to sell cotton to one who had made him advances on condition that the landlord's lien was satisfied, objected to the purchaser's retention of the cotton without satisfying the lien, there was no sale.—Caswell v. Lensing & Bennett, Tex. Civ. App., 183 S. W. 75.

119.——Repudiation of Contract.—Where a motor truck was sold under a warranty of materials and workmanship for one year, the buyers' failure to repudiate the contract as soon as it discovered that the truck was useless will not bar recovery, where the contract was repudiated within a year.—Avery Co. of Texas v. Staples Mercantile Co., Tex. Civ. App., 183 S. W. 43.

120.——Rescission.—Where, in an action to rescind for fraud an executed sale of a half interest in a mercantile corporation for which plaintiff had deeded land, and to cancel the deed and compel reconveyance, it appeared that plaintiff had managed the business for 1½ years, that the store and contents were destroyed by fire, and that the parties could not be placed in statu quo, held that the action should be dismissed and plaintiffs left to an action for damages.—Rosenwater v. Selleseth, N. D., 156 N. W. 540.

121. **Street Railroads**—Pedestrian.—After a motorman has passed a pedestrian on a street crossing in safety with the front end of his car, he cannot be held to have knowledge of any danger she assumed by changing her position.—Wood v. Los Angeles Ry. Corp., Cal., 155 Pac. 68.

122. **Wills**—Advancement.—Where a parent or one standing in loco parentis, having made advancements to a child, afterwards makes a will disposing of his whole estate without provision for reduction of the advancements, such advancements will not be deducted from the child's share under the will.—Hayes v. Welling, R. I., 96 Atl. 843.